

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)	
PHARMACY, INC. PRODUCTS LIABILITY)	MDL No. 02419
LITIGATION)	Docket No. 1:13-md-2419-RWZ
_____)	
)	
This document relates to:)	
)	
All Cases against the Box Hill Defendants ¹)	
)	

**THE BOX HILL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO
STRIKE CERTAIN AFFIRMATIVE DEFENSES, CROSS CLAIMS AND THIRD-
PARTY CLAIMS FROM THEIR ANSWER TO PLAINTIFFS' COMPLAINTS**

Defendants Box Hill Surgery Center, LLC, Ritu T. Bhambhani, M.D., and Ritu T. Bhambhani, M.D., LLC (collectively, "Box Hill Defendants") oppose the Maryland Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross Claims and Third-Party Claims from Defendants' Answer to Plaintiffs Complaints.

Plaintiffs' Motion raises substantive questions of law that are improper to decide based on a Fed. R. Civ. Proc. 12(f) motion to strike. Specifically, Plaintiffs seek to preclude Defendants from pursuing certain statutory remedies available to them under Maryland law in the event that Plaintiffs are awarded economic damages in the captioned cases. The rights asserted in the Affirmative Defenses at issue relate solely to the question of damages (not liability) and should not be stricken given the procedural posture of these cases. Rather, the question of whether

¹ This pleading applies to the following cases: Handy v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14019-RWZ; Armetta v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14022-RWZ; Torbeck v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14023-RWZ; Kashi v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14026-RWZ; Bowman v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14028-RWZ; Dreisch v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14029-RWZ; Davis v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14033-RWZ; Farthing v. Box Hill Surgery Center, LLC, et al. No. 1:14-cv-14036-RWZ.

Defendants are entitled to any reductions of possible, future damages awards should be addressed in post-verdict proceedings.

Plaintiffs have failed to demonstrate that the four affirmative defenses they seek to strike from Defendants' Answers are insufficient or immaterial to the facts or law of the litigation *sub judice*. Additionally, Plaintiffs have not shown that they would suffer any prejudice as a result of the denial of their Motion. To the contrary, none of the affirmative defenses they seek to strike will expand the scope of or lengthen case-specific discovery in the captioned cases, or cause the parties to expend unnecessary resources addressing frivolous and irrelevant issues. Rather, the four affirmative defenses Plaintiffs seek to strike are material and relevant to the proper amount of damages recoverable by Plaintiffs if and when a verdict is entered against Defendants. Accordingly, Plaintiffs' Motion should be denied.

The grounds for Defendants' Opposition are set forth in the accompanying Memorandum of Points and Authorities.

Dated: January 7, 2016

Respectfully submitted,

/s/ Gregory K. Kirby

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing this 7th day of January, 2016.

/s/ Gregory K. Kirby

Gregory K. Kirby